BAIL SLIP

The Appellants/Accused Nos. 2 to 5/ (viz) 1. Senthil @ Chinna Chetty. 2. Muthurathinavel, 3. Saravanan @ Periya Chetty 4. Singonu @ Singaravelu were directed to be released on bail as per the order of this Court dated 22.3.2000 and made in Crl MP NO. 1474 of 2000 in Crl Appeal No. 240 of 2000.

2. The Appellant/Accused No. 1 (viz) Shoba @ Muthumanickam was directed to be released on bail as per the order of this Court dated 21.11.2002 in Crl MP No. 11234 of 2002 in Crl Appeal NO. 391 of 2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.09.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NOS. 240, 391 & 659 OF 2000
AND
CRL. R.C. NO. 402 OF 2001

C.A. NO. 240 OF 2000

1) Senthil @ Chinna Chetty
2) Muthurathinavel
3) Saravanan @ Periya Chetty
4) Singaru @ Singaravelan .. Appellants
(Accused Nos 2 to 5)

- Vs -

State rep. by
The Inspector of Police
Town Police Station
Thiruvarur.Cr. NO. 343 of 1998) .. Respondent
(Complainant)

C.A. NO. 391 OF 2000

Shoba @ Muthumanickam .. Appellant
(Accused NO.1)

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- Vs -

State rep. by
The Inspector of Police
Town Police Station
Thiruvarur. (Cr. No. 343 of 1998) .. Respondent

C.A. NO. 659 OF 2000

State rep. by
The Inspector of Police
Town Police Station
Thiruvarur (crime NO. 343/98)
rep. by
Public Prosecutor
High Court, Madras. .. Appellant

- Vs -

1) Senthil @ Chinna Chetty
2) Muthurathinavel
3) Saravanan @ Periya Chetty
4) Singaru @ Singaravelan
5) M.R. @ M.Rajendran
6) Seeler @ Gunaseelan .. Respondents
(Accused Nos. 2 to 7)

CRL. R.C. NO. 402 OF 2001

Suresh .. Petitioner

- Vs -

1) Senthil @ Chinna Chetty
2) Muthurathinavel
3) Saravanan @ Periya Chetty
4) Singaru @ Singaravelan
5) Seeler @ Gunaseelan

6) State rep. by
The Inspector of Police
Town Police Station
Thiruvarur.(Cr. No. 343/98) .. Respondents

C.A. Nos. 240 and 391 of 2000 preferred against the conviction and sentence passed by the learned Addl. District Sessions Judge, Nagapattinam, made in S.C. No. 187 of 1999 dated 25.2.2000 as stated therein.

C.A. No. 659 of 2000 preferred against the judgment of acquittal passed by the learned Addl. District Sessions Judge, Nagapattinam, made in S.C. No. 187 of 1999 dated 25.2.2000 as stated therein.

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Crl. R.C. No. 402 of 2001 preferred against the judgment of acquittal passed by the learned Addl. District Sessions Judge, Nagapattinam, made in S.C. No. 187 of 1999 dated 25.2.2000 as stated therein.

For Appellants : Mr. B.Sriramulu, SC, for
Mr. T.Munirathina Naidu in CA 391/00
Mr. D.Veerasekaran in CA 240/00
Mr. M.K.Subramanian, GA (Crl. Side) in CA 659/00

For Petitioner : Mr. T.R. Ravi in Crl. R.C. No.402/01

For Respondents : Mr. D.Veerasekaran in CA 659/00 & for RR1, 2 & 5 in Crl. R.C. No.402/01
Mr. C.S.Dhanasekaran for RR3 & 4 in Crl. R.C. No.402/01
Mr. M.K.Subramanian, GA (Crl. Side) in CA 240 & 391/00 & R6 in Crl. R.C. No.402/01

COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

This judgment shall govern C.A. Nos. 240, 391 and 659 of 2000 and Crl. R.C. No.402 of 2001. C.A. No.240/00 is by A-2 to A-5 and C.A. No.391/00 is by A-1 against their conviction and sentence, while C.A. No.659/00 is preferred by the State against the acquittal of A-2 to A-7, while Crl. R.C. No.402/01 is by P.W.3 aggrieved over the judgment of acquittal by the trial court.

2. Appellants, seven in number, stood charged before the Addl. Sessions Court, Nagapattinam in S.C. No.187/99 under the following provisions of law and were also found guilty as stated below. A-6 and A-7 were charged under Section 147 IPC, but were acquitted; A-1 to A-5 were charged under Section 148 IPC and on being found guilty they were each sentenced to one year rigourous imprisonment and also directed to pay a fine of Rs.500/= with a default sentence of three months. A-1 and A-2 were charged under Section 341 IPC and on being found guilty each one of them was directed to pay a fine of Rs.500/= with a default sentence of three months simple imprisonment. A-1 on being found guilty under Section 302 IPC as charged, was sentenced to imprisonment for life and also directed to pay a fine of Rs.1,000/= with a default sentence of six months rigourous imprisonment. A-6 and A-7 though were charged under Section 302 read with 114 IPC, were acquitted. A-2 to A-5 though were charged under Section 302 read with 149 IPC were found guilty under Section 324 read with 149 IPC

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and each one of them was sentenced to rigourous imprisonment for one year and each one of them was directed to pay a fine of Rs.500/= with a default sentence of three months rigourous imprisonment.

3. The short facts necessary for the disposal of these appeals and the revision could be stated thus :-

P.W.1 is a native of Tiruvarur residing at Thozhuvangudi street. P.W.2 is residing at Mada street. P.W.3 is also a resident of the said place. The appellants also belong to Tiruvarur. P.W.1, the cousin brother of the deceased Kumaran, was a graduate and he was unemployed. He participated in the auction conducted for the cycle stand at Government Hospital, Tiruvarur, and came out successful in the auction. In the year 1998 an auction for the brandy shop at Tiruvarur was conducted and one of the accused by name R.D.Murthy and the deceased, Kumaran, participated in the said auction. In that auction, R.D.Murthy developed a grudge against the deceased. The auction took place just a week or ten days prior to the occurrence.

4. On the evening hours of 12.5.98 when P.W.1 was in his house along with P.W.2, at about 7.00 p.m., the deceased Kumaran came in a motor bike. He was in the house of P.W.1 for fifteen minutes and, thereafter, he left. When the deceased left the house of P.W.1, P.W.s 1 and 2 followed him suspecting that he might face some trouble at the hands of the accused. When they were nearing the junction of Mudaliar street and Melkadai street, A-2 came in a TVS-Moped and waylaid the deceased. The deceased slowed down his vehicle. At that time A-1 cut him with aruval on the neck. A-2 also cut him. The deceased fell down. P.W.s 1 and 2 shouted. Not satisfied, A-3 and A-4 also cut the deceased with aruval and following the same A-5 and A-7 also cut him. The deceased met with an instantaneous death.

5. Immediately P.W.1 proceeded to his house and after informing his relations he went to Tiruvarur Town police station where P.W.14, the Inspector of Police was present at that time. He gave a complaint, which stands marked as Ex.P-1 on the basis of which a case came to be registered in crime No.343/98 under Sections 147, 148, 341, 302 and 326 IPC. The express first information report, Ex.P-2, was despatched to court.

6. P.W.14, on taking up investigation, proceeded to the scene of occurrence and prepared an observation mahazar, Ex.P-5 in the presence of two witnesses. He also drew a rough sketch, Ex.P-18. The place of occurrence and the dead body were photographed through P.W.11, the photographer and M.O.17 series are the photographs and M.O.18 series are the negatives. From the scene of

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occurrence bloodstained earth, M.O.3, sample earth, M.O.4 and motor bike, M.O.1 were all recovered under the cover of a mahazar. In the presence of witnesses and panchayatadars the investigating officer conducted inquest over the dead body of the deceased and prepared inquest report, Ex.P-19. After inquest, the dead body was sent along with a requisition to the doctor for conducting autopsy.

7. On receipt of the requisition, P.W.12, the doctor attached to the Tiruvarur Government Hospital, conducted autopsy on the dead body of the deceased and found the following injuries :-

"1) Recent, clear-cut-edged, incised wound of varying depths involving skin, superficial and deep fascia and muscles on front and sides of neck and cutting horizontally the internal and external carotid arteries and jugular veins on both sides extending from right ear lobe level to the middle of neck, one cut; the other cut extending from left ear-lobe level to middle of neck with an 1 cm bridge of normal skin at mid point of neck with dark blood clots.
2) The trachea (air passage) and oesophagus (the food passage) severed totally.
3) The spinal cord, the brain substance, the membranes and skull-bone not involved.
4) 3 cm long incised wound, 4 cm deep over left chest, below nipple, which does not involve the heart or lung.
5) Recent, clear cut edged incised wounds with dark blood clots without puss are found in other places, viz.,
-- 4 cm x 2 cm right shoulder front oblique cuts.
-- 1-1/2 cm x 1 cm right upper arm front oblique cuts.
-- 2 cm x 1 cm right upper arm (two in number) oblique cuts.
-- 2 cm x 1 cm right upper arm near elbow oblique cuts.
-- 2 cm x 1 cm right upper arm near elbow oblique cuts.
-- 2 cm x 1 cm left shoulder (two in number).
-- 6 cm x ½ cm left forearm back.
-- 6 cm x 2 cm right thigh (vertical) cut.
-- 2 cm x 1 cm right knee horizontal cut.
-- 1 cm x 1 cm left knee horizontal cut.
-- 6 cm x ½ cm buttocks both horizontal cut.
-- 2 cm x 1 cm – left hip horizontal cut.
-- 5 cm x 1 cm right chest oblique cut.
-- 8 cm x 3 cm – right hip – oblique cut. No bone level."

The doctor issued Ex.P-12, the post-mortem certificate, opining that the deceased died on account of sudden loss of blood from major blood vessels followed by Hypovolumic

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shock.

8. P.W.14, continuing with his investigation, arrested A-1, A-2 and A-4 on 13.5.98. A-5 was arrested on 14.5.98. A-3 and R.D.Murthy surrendered before the Judicial Magistrate, Nagapattinam on 18.5.98. A-1 gave a confessional statement, which was recorded by the officer in the presence of two witnesses. Ex.P-7 is the admissible portion of the said statement, pursuant to which he produced M.O.s 5 to 11, the weapons of crime, which were recovered under a mahazar, Ex.P-14. All the accused were sent to court for remand. The material objects were sent to court along with a requisition to send them for analysis. Accordingly, the material objects were subjected to analysis and the court received Ex.P-17, the report of the chemical analyst and Ex.P-18, the report of the serologist. On completion of the investigation, the investigating officer filed the final report against all the accused. The case was committed to the court of sessions and necessary charges were framed against the accused except one R.D.Murthy in respect of whom a separate case was conducted.

9. In order to substantiate the charges framed against the appellants, the prosecution marched fourteen witnesses and relied on twenty exhibits and eighteen material objects. On completion of the evidence on the side of the prosecution, the appellants were questioned under Section 313 Cr.P.C. on the incriminating circumstances found in the evidence of the witnesses. They denied all the incriminating circumstances. The appellants examined three witnesses as D.W.s 1 to 3 to the effect that the said witnesses were present at the time of occurrence and that none of the accused was involved in the said act. On seeing the occurrence, D.W.1 informed P.W.1 and D.W.2 informed some other relations and only after that P.W.1 has given the complaint. The trial court, after hearing the arguments advanced by both sides and on scrutiny of the materials found the accused guilty and awarded the punishment as referred to above. Hence, C.A. Nos.240 and 391 of 2000 at the instance of the accused aggrieved over their conviction and sentence and C.A. No.659 of 2000 by the State against the acquittal of A-2 to A-7 while Crl. R.C. No.402 of 2001 is by P.W.3 aggrieved over the judgment of acquittal of the accused.

10. Mr. B.Sriramulu, learned senior counsel appearing for the appellants inter alia submits that in order to substantiate the charges, the prosecution has examined P.W.s 1 to 6 as eye witnesses, but it is highly doubtful whether any one of the witnesses would have been present at the time of the occurrence. In the instant case out of the six witnesses two have turned hostile. Thus the prosecution had to mainly rely on the evidence of P.W.s 1

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to 3. Insofar as P.W.3 is concerned, his name was not found in the first information report, while insofar as P.W.2, his name does not find a place in the inquest and thus what was available for the prosecution was only the evidence of P.W.1. Insofar as the evidence of P.W.1 is concerned, it is thoroughly untrustworthy. It is also pertinent to point out that he was closely related to the deceased. In the instant case, P.W.1 has not mentioned anything about A-6 and A-7 in his original report, but he has developed the case by including A-6 and A-7 at the time of evidence. At one stage he would say that he prepared the complaint in his house and went to the police station, but at yet another place he would say that the report was prepared at the police station. Apart from the above discrepancies, it is the very case of the prosecution that the auction took place a week or ten days prior to the occurrence and the deceased was visiting the house of P.W.1 thereafter on all days, but P.W.1 did not take any steps to follow him on any one of the days to give him protection, but he went only on the date of occurrence, which is highly artificial and improbable.

11. In the instant case, delay is noticed at every point of time. The occurrence, according to the prosecution, has taken place at 7.45 p.m. The police station is situate within a distance of half a kilometre. The case was registered, according to the prosecution at about 8.30 p.m., but the first information report has reached the court only at about 2.45 a.m. the early morning. The explanation that was offered was that the first information report was taken to the Judicial Magistrate, Tiruvarur and since he was on leave, the first information report was taken to the Judicial Magistrate, Nagapattinam, but from the evidence of the constable it would be clear that he took the first information report from the police station only by 1.45 a.m. Had it been true that the case came to be registered at 8.30 p.m., in a case of murder like this, such a delay till 1.45 a.m. is fatal to the prosecution case and no explanation was forthcoming from the prosecution for the delay. Apart from the above, according to the prosecution, P.W.1 was the informant. The investigating officer at the time of giving evidence has clearly stated that he examined P.W.1 and recorded his statement and he specifically asked P.W.1 whether anybody knew about the occurrence for which P.W.1 informed the investigating officer that no one else knew about the occurrence and, hence, their names were not mentioned therein. Such a statement of P.W.1 has reached the Magistrate along with the inquest report only on 14.5.98 at 0045 hours. In the instant case, the occurrence has taken place on 12.5.98 at about 7.45 p.m.; the case came to be registered within forty-five minutes. If to be so, the prosecution is duty bound to explain as to how the delay was caused.

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12. From the evidence of P.W.1 it would be clear that he has not informed anybody at the earliest and it is highly doubtful whether P.W.1 could have seen the occurrence at all and the delay caused in taking the printed first information report to the court after the registration of the crime would throw a doubt whether P.W.1 could have seen the occurrence at all. Added further the learned senior counsel, insofar as the other accused R.D.Murthy is concerned, the case against him was split up and the same was taken up as a separate sessions case and the witnesses, who were examined in this case were examined in that case also, but all of them turned hostile and that case ended in acquittal and the State has not preferred any appeal therefrom. In the circumstances, the learned senior counsel would further add that there is no reason to suspect or reject the evidence of the defence witnesses to the effect that they witnessed the occurrence and that the appellants were not involved and it was D.W.1 who informed P.W.1 about the occurrence and thereafter P.W.1 had gone to the police station. Added further the learned senior counsel that there is evidence to show that the deceased has got number of enemies during the relevant point of time and the evidence of P.W.1 stands uncorroborated and the evidence of P.W.1 is filled with doubts and suspicions and, hence, it would be highly unsafe to find the appellants guilty, which the trial court has failed to appreciate and therefore, the appellants are entitled for an acquittal at the hands of this Court.

13. The Court heard the learned Government Advocate (Crl. Side) appearing for the State on the above contentions and also perused the recorded evidence, both oral and documentary.

14. The cause of death of Kumar stands established through the evidence of the doctor, P.W.12, who conducted autopsy and who issued Ex.P-12, the post-mortem certificate. It is very clear from the evidence of the doctor that the deceased died an account of sudden loss of blood from major blood vessels followed by Hypovolumic shock. The said fact was not disputed by the appellants either before the trial court or before this Court. On the medical evidence this Court holds that the deceased died on account of homicidal violence.

15. In the instant case, the question that arises for the consideration of this Court is whether the prosecution has proved the case beyond reasonable doubt pointing to the involvement of the appellants in the crime. After careful analysis of the evidence and the submissions made by either side, this Court has to give an answer in the negative.

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16. The prosecution relied not on circumstantial

evidence, but on the evidence of the eye witnesses. Insofar as the eye witnesses are concerned, P.W.s 1 to 3 were mainly relied on by the prosecution. It is pertinent to point out that the name of P.W.3 does not find a place in the first information report, though P.W.1 would claim that he was present and talking to him at the place of occurrence. It is pertinent to point out that P.W.3 was the brother of the deceased and a relative of P.W.1 and had it been true that P.W.3 was present at the time of occurrence, the said fact would have been stated by P.W.1. Insofar as P.W.2 is concerned, though he claimed to be present at the time of occurrence, the said fact is disputed by the investigating officer and apart from that in the inquest report, he was not shown as one of the witnesses examined. This would clearly reveal that had the inquest taken place as putforth by the prosecution immediately following the registration of the crime, the name of P.W.2 would have been shown, but it is not so. Apart from that, the clinching answer from the mouth of the investigating officer, P.W.14 that when he enquired P.W.1 as to the fact whether anybody knew about the occurrence, P.W.1 informed him that no one was present and, therefore, it was not mentioned so. This would clearly reveal that no one else except P.W.1, even according to the evidence of P.W.1, was available at the time of occurrence.

17. Therefore, P.W.1 is the only witness whose evidence has got to be looked into and analysed. P.W.1 is the cousin brother of the deceased and, therefore, his evidence has got to be subjected to careful analysis as required by law. In the instant case, it is highly doubtful whether he would have been an eye witness to the occurrence for more reasons than one. Even according to the case of the prosecution, the auction, which was the motive for the occurrence, took place a week or ten days prior to the occurrence, but the police officials did not care to examine anyone connected to or concerned with the said auction to show that the appellants were also involved in the said auction. Even according to P.W.1, the deceased was coming to his house even on the previous days also, but on those occasions neither P.W.1 nor anyone followed him for giving protection, but on the date of occurrence, P.W.1 thought it fit to follow the deceased along with P.W.1, which is highly improbable to accept and believe. It is the specific evidence of P.W.1 that he followed the deceased along with P.W.2 in a TVS-Moped, but in the instant case the presence of P.W.2 is unacceptable by the evidence referred supra and P.W.1 also in his evidence would state that after the occurrence he did not either go to the police station or go to inform the members of the family of the deceased, but he went to his house, prepared a report and went to the police station thereafter. But at a later point of time, P.W.1 would say that the complaint was prepared at the police station; but P.W.14,

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the investigating officer, who registered the case would say that P.W.1 gave him instructions and on his dictation Ex.P-1 was written by him. All the above would go to show that Ex.P-1 did not come into existence as putforth by the prosecution.

18. Further in the instant case, the occurrence took place at 7.30 p.m. and a case came to be registered at 8.30 p.m., but the printed first information report had reached the Magistrate only by 2.45 a.m. on the morning of the next day. If to be so, the prosecution is duty bound to offer acceptable explanation for such a long delay in the first information report reaching the Magistrate in a grave case of murder. The only explanation offered by the prosecution before the trial court was that after registration of the crime, the first information report was taken by a constable to the Judicial Magistrate, Tiruvarur and since he was on leave the constable thereafter took it to Judicial Magistrate, Nagapattinam and handed over the first information report at about 2.45 a.m. But there is an admission by the same constable that he took the first information report from the police station only by 1.45 a.m. If to be so, from the time of registration at 8.30 p.m., as claimed by the prosecution, how such a delay of nearly four hours took place in handing over the first information report is not explained acceptably. In the instant case, not only a delay is noticed in the first information report reaching the Magistrate, but the statement of P.W.1, which according to the prosecution, was recorded during inquest, which was within a short time from the registration of the crime, but the said statement of P.W.1 and the inquest report reached the Court only on 14.5.98 at 0045 hours. Had it been true that the inquest was conducted as putforth by the prosecution and the statement of P.W.1, the material witness was recorded, why such delay has occurred in sending the same to the Magistrate and this Court is also unable to understand as to the necessity for the said statement and the inquest report to be handed over to the Magistrate during the night hours on 14.5.98. Apart from the above, the statement of the other witnesses, P.W.s 2 to 7 have reached the court only on 18.5.98. Had it been true that they were all eye witnesses to the occurrence, why there was such a long delay in sending them separately from that of P.W.1 and all the above remains unknown.

19. In the instant case, it is also brought to the notice of the court that insofar as R.D.Murthy, the case against him was split up and the witnesses, who were examined in this case were examined thereto and all of them turned hostile and the case ended in acquittal and the State has not preferred any appeal. In the instant case, as putforth by the learned senior counsel, the narrated suspicions attendant over the prosecution case and evidence

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of the eye witnesses remains unreliable and the delay in the first information report reaching the court and the delay in sending the inquest report along with the statement of the material witness, P.W.1 and the doubt whether the first information report could have come into existence as putforth by the prosecution and the above discrepancies and material contradictions in the evidence would suffice, in the opinion of this Court, to cause an acquittal and finding the appellants not guilty. It is also to be pointed out that in a case like this where the only witness is P.W.1 and the evidence of the other witnesses have been rejected for the reasons stated supra and P.W.1 being closely related to the deceased and his evidence not being corroborated and it does not remain beyond doubts and suspicions, it would be highly unsafe to find the appellants guilty, as has been done by the trial court, and the appeals filed by the appellants have got to be allowed.

20. In result, the appeals, C.A. Nos.240 and 391 of 2000 filed by the appellants are allowed. The appeal, C.A. No.659 of 2000 and the revision, Crl. R.C. No.402 of 2001 filed by the State and P.W.3 respectively deserves to be dismissed and accordingly they are dismissed. The conviction and sentence imposed on the appellants by the trial court are set aside and they are acquitted of all the charges framed against them. Fine amounts, if any, paid by the appellants shall be refunded. Bail bonds executed by them shall stand cancelled.

GLN

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To
1) The Addl. District Sessions Judge, Nagapattinam.
2) -Do- Thro' The Principal Sessions Judge, Nagapattinam.
3) The District Collector, Nagapattinam.
4) The Director General of Police, Chennai.
5) The Public Prosecutor, High Court, Madras.
6) The Superintendent of Central Prison, Cuddalore.
7) The Inspector of Police, Tiruvarur Town Police Station, Tiruvarur.
8) The Judicial Magistate Thiruvarur
9) The Chief Judicial Magistrate, Nagapattinam

+ one cc to Mr. D. VEERASEKARAN, Advocate sr no. 39380
+ one cc to Mr. T.R. Ravi, Advocate Sr No. 39579

PV (CO)
NM(27/09/2005)

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